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**Attorneys for Plaintiff Federal Deposit  
Insurance Corporation as Receiver for  
AmTrust Bank,**

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

FEDERAL DEPOSIT INSURANCE  
CORPORATION as Receiver for  
AMTRUST BANK

Plaintiff,

vs.

FIRST AMERICAN TITLE  
INSURANCE COMPANY, a  
California corporation (erroneously  
sued as FIRST AMERICAN TITLE  
INSURANCE AGENCY),  
Defendants.

Case No. 8:14-cv-00617 AG (JPRx)  
Assigned to Hon. Andrew J. Guilford

**STIPULATED PROTECTIVE  
ORDER**

## **STIPULATED PROTECTIVE ORDER**

### **1. PURPOSE AND LIMITS OF THIS ORDER**

Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles. This Order does not automatically authorize the filing under seal of material designated under this Order. Instead, the parties must comply with L.R. 79-5.1 if they seek to file anything under seal. This Order does not govern the use at trial of material designated under this Order.

### **2. DESIGNATING PROTECTED MATERIAL**

**2.1. Over-Designation Prohibited.** Any party or non-party who designates information or items for protection under this Order as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” (a “designator”) must only designate specific material that qualifies under the appropriate standards. To the extent practicable, only those parts of documents, items, or oral or written communications that require protection shall be designated. Designations with a higher confidentiality level when a lower level would suffice are prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified designations expose the designator to sanctions, including the Court’s striking all confidentiality designations made by that designator. Designation under this Order is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause competitive or other recognized harm. Material may not be designated if it has been made public, or if designation is otherwise unnecessary to protect a secrecy interest. If a designator learns that information or

1 items that it designated for protection do not qualify for protection at all or do not  
2 qualify for the level of protection initially asserted, that designator must promptly  
3 notify all parties that it is withdrawing the mistaken designation.

4       **2.2. Manner and Timing of Designations.** Designation under this Order  
5 requires the designator to affix the applicable legend (“CONFIDENTIAL” or  
6 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page that  
7 contains protected material. For testimony given in deposition or other proceeding,  
8 the designator shall specify all protected testimony and the level of protection being  
9 asserted. It may make that designation during the deposition or proceeding, or may  
10 invoke, on the record or by written notice to all parties on or before the next  
11 business day, a right to have up to 21 days from the deposition or proceeding to  
12 make its designation.

13       **2.2.1.** A party or non-party that makes original documents or materials  
14 available for inspection need not designate them for protection until after the  
15 inspecting party has identified which material it would like copied and produced.  
16 During the inspection and before the designation, all material shall be treated as  
17 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting  
18 party has identified the documents it wants copied and produced, the producing  
19 party must designate the documents, or portions thereof, that qualify for protection  
20 under this Order.

21       **2.2.2.** Parties shall give advance notice if they expect a deposition or  
22 other proceeding to include designated material so that the other parties can ensure  
23 that only authorized individuals are present at those proceedings when such material  
24 is disclosed or used. The use of a document as an exhibit at a deposition shall not in  
25 any way affect its designation. Transcripts containing designated material shall have  
26 a legend on the title page noting the presence of designated material, and the title  
27 page shall be followed by a list of all pages (including line numbers as appropriate)  
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1 that have been designated, and the level of protection being asserted. The designator  
 2 shall inform the court reporter of these requirements. Any transcript that is prepared  
 3 before the expiration of the 21-day period for designation shall be treated during that  
 4 period as if it had been designated HIGHLY CONFIDENTIAL – ATTORNEY  
 5 EYES ONLY unless otherwise agreed. After the expiration of the 21-day period, the  
 6 transcript shall be treated only as actually designated.

7 **2.3. Inadvertent Failures to Designate.** An inadvertent failure to designate  
 8 does not, standing alone, waive protection under this Order. Upon timely assertion  
 9 or correction of a designation, all recipients must make reasonable efforts to ensure  
 10 that the material is treated according to this Order.

### 11 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 All challenges to confidentiality designations shall proceed under L.R. 37-1  
 13 through L.R. 37-4.

### 14 **4. ACCESS TO DESIGNATED MATERIAL**

15 **4.1. Basic Principles.** A receiving party may use designated material only  
 16 for this litigation. Designated material may be disclosed only to the categories of  
 17 persons and under the conditions described in this Order.

#### 18 **4.2. Disclosure of CONFIDENTIAL Material Without Further**

19 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the  
 20 designator, a receiving party may disclose any material designated  
 21 CONFIDENTIAL only to:

22 **4.2.1.** The receiving party's outside counsel of record in this action and  
 23 employees of outside counsel of record to whom disclosure is reasonably necessary;

24 **4.2.2.** The officers, directors, and employees of the receiving party to  
 25 whom disclosure is reasonably necessary, and who have signed the Agreement to Be  
 26 Bound (Exhibit A);

1           **4.2.3.** Experts retained by the receiving party's outside counsel of  
2 record to whom disclosure is reasonably necessary, and who have signed the  
3 Agreement to Be Bound (Exhibit A);

4           **4.2.4.** The Court and its personnel;

5           **4.2.5.** Outside court reporters and their staff, professional jury or trial  
6 consultants, and professional vendors to whom disclosure is reasonably necessary,  
7 and who have signed the Agreement to Be Bound (Exhibit A);

8           **4.2.6.** During their depositions, witnesses in the action to whom  
9 disclosure is reasonably necessary and who have signed the Agreement to Be Bound  
10 (Exhibit A); and

11           **4.2.7.** The author or recipient of a document containing the material, or  
12 a custodian or other person who otherwise possessed or knew the information.

13           **4.3. Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**  
14 **ONLY Material Without Further Approval.** Unless permitted in writing by the  
15 designator, a receiving party may disclose material designated HIGHLY  
16 CONFIDENTIAL – ATTORNEY EYES ONLY without further approval only to:

17           **4.3.1.** The receiving party's outside counsel of record in this action and  
18 employees of outside counsel of record to whom it is reasonably necessary to  
19 disclose the information;

20           **4.3.2.** The Court and its personnel;

21           **4.3.3.** Outside court reporters and their staff, professional jury or trial  
22 consultants, and professional vendors to whom disclosure is reasonably necessary,  
23 and who have signed the Agreement to Be Bound (Exhibit A); and

24           **4.3.4.** The author or recipient of a document containing the material, or  
25 a custodian or other person who otherwise possessed or knew the information.

1           **4.4. Procedures for Approving or Objecting to Disclosure of HIGHLY**  
2 **CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel**  
3 **or Experts.** Unless agreed to in writing by the designator:

4           **4.4.1.** A party seeking to disclose to in-house counsel any material  
5 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first  
6 make a written request to the designator providing the full name of the in-house  
7 counsel, the city and state of such counsel's residence, and such counsel's current  
8 and reasonably foreseeable future primary job duties and responsibilities in  
9 sufficient detail to determine present or potential involvement in any competitive  
10 decision-making.

11           **4.4.2.** A party seeking to disclose to an expert retained by outside  
12 counsel of record any information or item that has been designated HIGHLY  
13 CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written request to  
14 the designator that (1) identifies the general categories of HIGHLY  
15 CONFIDENTIAL – ATTORNEY EYES ONLY information that the receiving  
16 party seeks permission to disclose to the expert, (2) sets forth the full name of the  
17 expert and the city and state of his or her primary residence, (3) attaches a copy of  
18 the expert's current resume, (4) identifies the expert's current employer(s), (5)  
19 identifies each person or entity from whom the expert has received compensation or  
20 funding for work in his or her areas of expertise (including in connection with  
21 litigation) in the past five years, and (6) identifies (by name and number of the case,  
22 filing date, and location of court) any litigation where the expert has offered expert  
23 testimony, including by declaration, report, or testimony at deposition or trial, in the  
24 past five years. If the expert believes any of this information at (4) - (6) is subject to  
25 a confidentiality obligation to a third party, then the expert should provide whatever  
26 information the expert believes can be disclosed without violating any  
27 confidentiality agreements, and the party seeking to disclose the information to the  
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1 expert shall be available to meet and confer with the designator regarding any such  
2 confidentiality obligations.

3           **4.4.3.** A party that makes a request and provides the information  
4 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the  
5 identified in-house counsel or expert unless, within seven days of delivering the  
6 request, the party receives a written objection from the designator providing detailed  
7 grounds for the objection.

8           **4.4.4.** All challenges to objections from the designator shall proceed  
9 under L.R. 37-1 through L.R. 37-4.

10 **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
11 **PRODUCED IN OTHER LITIGATION**

12           **5.1. Subpoenas and Court Orders.** This Order in no way excuses non-  
13 compliance with a lawful subpoena or court order. The purpose of the duties  
14 described in this section is to alert the interested parties to the existence of this  
15 Order and to give the designator an opportunity to protect its confidentiality interests  
16 in the court where the subpoena or order issued.

17           **5.2. Notification Requirement.** If a party is served with a subpoena or a  
18 court order issued in other litigation that compels disclosure of any information or  
19 items designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL  
20 – ATTORNEY EYES ONLY, that party must:

21           **5.2.1.** Promptly notify the designator in writing. Such notification shall  
22 include a copy of the subpoena or court order;

23           **5.2.2.** Promptly notify in writing the party who caused the subpoena or  
24 order to issue in the other litigation that some or all of the material covered by the  
25 subpoena or order is subject to this Order. Such notification shall include a copy of  
26 this Order; and  
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1                   **5.2.3.** Cooperate with all reasonable procedures sought by the  
2 designator whose material may be affected.

3                   **5.3. Wait For Resolution of Protective Order.** If the designator timely  
4 seeks a protective order, the party served with the subpoena or court order shall not  
5 produce any information designated in this action as CONFIDENTIAL or HIGHLY  
6 CONFIDENTIAL – ATTORNEY EYES ONLY before a determination by the court  
7 where the subpoena or order issued, unless the party has obtained the designator's  
8 permission. The designator shall bear the burden and expense of seeking protection  
9 of its confidential material in that court.

10 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

11                   If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
12 designated material to any person or in any circumstance not authorized under this  
13 Order, it must immediately (1) notify in writing the designator of the unauthorized  
14 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the  
15 designated material, (3) inform the person or persons to whom unauthorized  
16 disclosures were made of all the terms of this Order, and (4) use reasonable efforts  
17 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

18 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
19 **PROTECTED MATERIAL**

20                   When a producing party gives notice that certain inadvertently produced  
21 material is subject to a claim of privilege or other protection, the obligations of the  
22 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
23 This provision is not intended to modify whatever procedure may be established in  
24 an e-discovery order that provides for production without prior privilege review  
25 pursuant to Federal Rule of Evidence 502(d) and (e).  
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1    **8.     FILING UNDER SEAL**

2            Without written permission from the designator or a Court order, a party may  
 3 not file in the public record in this action any designated material. A party seeking to  
 4 file under seal any designated material must comply with L.R. 79-5.1. Filings may  
 5 be made under seal only pursuant to a court order authorizing the sealing of the  
 6 specific material at issue. The fact that a document has been designated under this  
 7 Order is insufficient to justify filing under seal. Instead, parties must explain the  
 8 basis for confidentiality of each document sought to be filed under seal. Because a  
 9 party other than the designator will often be seeking to file designated material,  
 10 cooperation between the parties in preparing, and in reducing the number and extent  
 11 of, requests for under seal filing is essential. If a *receiving party's* request to file  
 12 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then  
 13 the receiving party *may file the material in the public record* unless (1) *the*  
 14 *designator* seeks reconsideration within four days of the denial, or (2) as otherwise  
 15 instructed by the Court.


16    **9.     FINAL DISPOSITION**

17 Within 60 days after the final disposition of this action, each party shall return all  
 18 designated material to the designator or destroy such material, including all copies,  
 19 abstracts, compilations, summaries, and any other format reproducing or capturing  
 20 any designated material. The receiving party must submit a written certification to  
 21 the designator by the 60-day deadline that (1) identifies (by category, where  
 22 appropriate) all the designated material that was returned or destroyed, and (2)  
 23 affirms that the receiving party has not retained any copies, abstracts, compilations,  
 24 summaries, or any other format reproducing or capturing any of the designated  
 25 material. This provision shall not prevent counsel from retaining an archival copy of  
 26 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
 27 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
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1 work product, and consultant and expert work product, even if such materials  
2 contain designated material. Any such archival copies remain subject to this Order.

3 **IT IS SO ORDERED**

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5 DATED: December 2, 2014

By:   
6 Hon. Jean P. Rosenbluth  
7 U.S. Magistrate Judge  
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**EXHIBIT A**  
**AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Protective Order that was issued  
by the United States District Court for the Central District of California on \_\_\_\_\_  
[date] in the case of *FDIC as Receiver for AmTrust Bank v. First American Title*  
*Insurance Company*, Case No. 8:14-cv-00617 AG (JPRx). I agree to comply with  
and to be bound by all the terms of this Protective Order, and I understand and  
acknowledge that failure to so comply could expose me to sanctions and punishment  
for contempt. I solemnly promise that I will not disclose in any manner any  
information or item that is subject to this Protective Order to any person or entity  
except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Central District of California for the purpose of enforcing this Order, even if  
such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Order.

Date: \_\_\_\_\_  
City and State where sworn and signed: \_\_\_\_\_  
  
Printed name: \_\_\_\_\_  
  
Signature: \_\_\_\_\_